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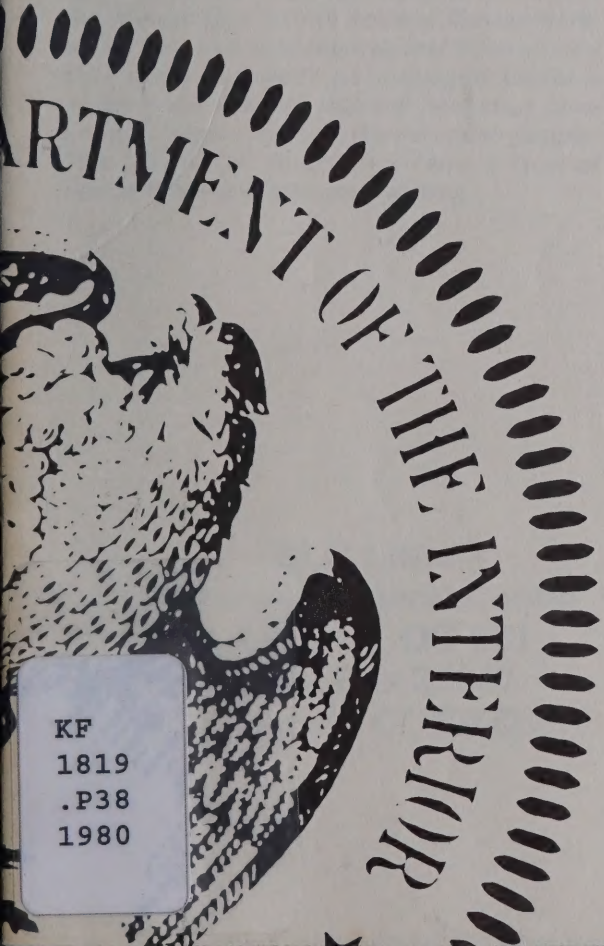
Patenting a Mining Claim on Federal Lands



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The Federal Land Policy and Management Act of 1976 launched a new era for public land management in America's Third Century. The act provides that the public lands remain under the stewardship of the Federal Government, unless disposal is in the national interest, and that their resources be managed under a multiple-use concept that will best meet present and future needs of the American people. This information booklet concerns a facet of one of these multiple uses: Mining.

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P.O. Box 25047
Denver, CO 80225

This bulletin provides mining claimants with basic information on how to file an application for a mineral patent and describes the administrative procedures involved. Minerals personnel in the Bureau of Land Management are available to discuss specific details with you.

PRELIMINARY STEPS—REQUIREMENTS UNDER THE PROVISIONS OF THE MINING LAWS

Patenting a mining claim can be rather expensive, especially if a lode claim is involved. Claimants should fully inform themselves regarding the legal requirements which must be satisfied before a patent can be issued. The most essential requirement is that there be within the boundaries of each claim, a discovery of a valuable mineral deposit which can be mined and marketed at a profit.

Although the mining statutes do not specifically define a valuable mineral deposit, the courts have established and the Federal Government follows the *prudent man and marketability test* to determine what is a discovery of a valuable mineral deposit. Requirements of the test have been met where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine. The evidence also must show that the minerals can be extracted and marketed at a profit.

Many people have interpreted the *prudent man and marketability test* to mean that merely any showing of a mineral, or a hope or wish for future discovery, is sufficient. This is not correct. There must be an actual physical discovery of the mineral on each claim, and this discovery must satisfy the *prudent man and marketability test*. Traces, isolated bits of mineral, or

minor indications are not sufficient to satisfy the test. Without a valid discovery, the mineral patent must be rejected through appropriate administrative proceedings.

With some exceptions, all valuable mineral deposits on public domain lands belonging to the United States are open to prospecting, location, and purchase under the mining laws of May 10, 1872, as amended.

Exceptions include:

1. Mineral deposits on the Outer Contiental Shelf.
2. Deposits of common varieties of mineral materials such as sand, stone, pumice, clay, or cinders.
3. Minerals in lands which are disposable only under special provisions of law.
4. Those minerals commonly referred to as "Leasing Act Minerals," i.e., oil, gas, coal, potash, phosphate, sodium, oil shale, bitumen, asphalt, bituminous rock or sand, and in Louisiana and New Mexico, sulfur.

Only citizens of the United States, or those who have declared their intention to become citizens, may purchase lands on which mineral deposits are located. Although the immigration laws no longer require a declaration of intent as part of the naturalization procedure, one may still make such a declaration for the purpose of satisfying other laws.

The locator or owner of a valid mining location has the right to its exclusive possession for mining purposes and is not required to file for patent. He may hold the land for mining purposes as long as he performs labor or makes improvements thereon worth not less than $100 each assessment year and as long as the land continues to be valuable for locatable minerals. The assessment year commences at 12 Noon on the 1st of September following

the date of location and ends at 12 Noon on the 1st of September of the following year.

Upon failure to comply with the assessment work requirement, the claim is open to relocation by others. Thus, while a mining claim may be held and mined under the location title, that title may be lost by failure to perform the required annual assessment work. Once a final certificate for the claim is issued, annual assessment work is no longer required.

Before a patent can be obtained, not less than $500 must have been expended in labor and/or improvements in the development of the claim. This work can be done anytime before applying for patent.

The procedure for obtaining patent to a mining claim is briefly set forth in this publication for the benefit of locators and owners of valid mining claims. It is advisable that you acquaint yourself with the instructions in this pamphlet and with regulations in Title 43, Code of Federal Regulations, copies of which may be obtained from any BLM State Office. Full compliance with the regulations is necessary.

Surveys

A mining claimant who wishes to patent a lode claim or a placer claim on unsurveyed land, or a claim described by metes and bounds (e.g., gulch placer), must have his claim surveyed. This survey must be made under the authority of the chief cadastral surveyor of the BLM State Office responsible for the State in which the claim is located. This applies to applications for millsites, except those millsites which may be described by legal subdivisions do not require a mineral survey. Placer claims described by legal subdivisions do not require special mineral surveys.

An application form for survey may be obtained from the BLM State Office's

chief cadastral surveyor who will also provide a list of United States mineral surveyors. The applicant must choose his surveyor from this list and enter into a private agreement with him. The mineral survey will be monitored and approved by the BLM State Office's chief cadastral surveyor.

A deposit is required to cover the cost of making plats and field notes for each claim. Each noncontiguous claim requires a separate survey and deposit.

Posting on Claim

Where a survey is required, the patent applicant will post a copy of the plat and a notice of intention to apply for patent before making application. Where a survey is not required, only a notice of intention to apply for patent must be posted.

The papers posted should be protected from the elements, yet, be in a conspicuous place on the claim or on one of a group of claims.

Application for Patent

Each application for patent must be filed in duplicate and accompanied by a $25 filing fee. This fee is not refundable.

Application must show right of possession to the claim and must state briefly, but clearly, the facts constituting the basis of the applicant's right to patent. This means that the applicant must show discovery of a valuable mineral deposit within the limits of the claim located, and that not less than $500 has been expended for development of each claim listed in the patent application. In the case of con-

tiguous claims, all work can be performed on just one claim, so long as the other claims are benefited by this work.

The applicant must state whether he has had any direct or indirect part in the development of the atomic energy program.

The application and all supporting statements must be signed within the land district (generally, within the State) where the claim is located. Individual claimants must sign the application. If the claimant is absent from the district, the application must be signed by an attorney-in-fact within the land district. An attorney for an individual must have an original or a certified copy of power of attorney.

An application by a corporation may be signed by its officers or by an agent or duly authorized attorney. A copy of the resolution of the Board of Directors authorizing its agent to file application, certified to by the corporation's secretary, is required. Provided he has authority to do so, the president or vice-president of the corporation may execute an application without a resolution of the Board of Directors. An attorney for a corporation must have an original or a certified copy of power of attorney.

LODE, PLACER, AND MILLSITE CLAIMS

A patent application for lode and placer claims must fully describe the reasons why the deposit claimed is believed to be a valuable mineral deposit. As appropriate, this application would include data, discussions, and analysis covering such items as mineral(s) applied for, general geology, economic geology, results of drilling, sampling, nature of mineralization, likely mining method, estimated mining and milling costs, beneficiation or metallurgical processes, transportation factors, market data and analysis, sales prices, costs, etc.

Lode Claims

An applicant applying for patent to a lode claim is required to furnish a full description of vein or lode, and to state whether ore has been extracted, and, if so, the amount and value. He must also describe where, within the limits of the claim, the vein or lode is exposed. In addition to improvements mentioned in the field notes, the applicant must describe in detail: shafts, cuts, tunnels, or other workings claimed as improvements, giving dimension, value, course, and distance to the nearest survey corner.

Placer Claims

An applicant applying for patent to a placer claim must show that the land applied for is placer ground containing valuable deposits not in vein or lode formation, and that title is sought because of the mineral therein and not to control water courses or to obtain valuable timber. This statement must relate to the character of the deposit and the natural features of the ground. The following details should be covered as fully as possible:

1. If the claim is for a deposit of placer gold, give the yield per cubic yard as shown by prospecting and development work, thickness of gold-bearing gravel, thickness of overburden, formation and extent of the deposit, and all other data showing the claim is valuable for its deposits of placer gold.

2. If the claim involves a deposit other than gold, describe fully the amount, nature, and extent of deposits, and state the reasons why it is regarded as a valuable mineral claim. Describe fully the natural features of the claim. Describe streams as to course, amount of water carried, and fall within the claim. State the kind and amount of timber and other vegetation

and their adaptability to mining and other uses.

3. If the placer claim is all placer ground, state that fact in the application and support it with statements of proof. If the claim is mixed placer and lode, so state, describing all of the known lodes (veins) situated within the boundaries of the placer claim. A specific declaration must be furnished for each lode intended to be claimed. Whether the lode is claimed or excluded, it must be surveyed and marked on the plat. The field notes and plat must give the area of the lode veins and the area of the placer ground separately. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatever nature, possessory or otherwise.

4. Since no examination and report by a mineral surveyor is available in cases of claims taken by legal subdivisions, describe in detail shafts, cuts, tunnels, and other workings claimed as improvements, and the dimensions, value, course, and distance to the nearest corner of the public surveys. This statement of description and value of improvements must be supported by statements of two disinterested witnesses. These statements of proof must be in duplicate.

Millsite Claims

Lands entered as millsites, not exceeding five acres of nonmineral land per millsite, may be included in a patent application for a lode or placer mining claim and may be patented with one of these.

Millsites also may be patented in separate proceedings.

In connection with lode claims, the millsite must be noncontiguous to the vein or lode. But it has been held that a millsite in conjunction with a lode claim may contact a side line, provided the claimant demonstrates that the lode or

vein does not extend into any part of the ground covered by the millsite. The millsite must be used or occupied for mining or milling purposes in conjunction with a valid mining claim.

The owner of a quartz mill or reduction works, who does not own a mine in connection with one of these, may locate and receive a patent for a millsite.

Where nonmineral land is needed, used, and occupied by the holder of a valid placer mining claim for mining, milling, processing, beneficiation, or other operations in connection with his claim, the millsite may be included in his mining claim patent application.

Millsites located in conjunction with lode claims and independent millsites may be purchased at the same rate applicable to lode claims; i.e., $5 per acre or any fraction of an acre. Millsites located in connection with placer claims may be patented upon payment of the purchase price of $2.50 per acre or any fraction of an acre.

The procedure for securing a patent for a millsite is the same as that for obtaining a patent to a mining claim—lode or placer. When included in an application for a lode claim, a copy of the application and a copy of the plat must be posted on the millsite as well as on the lode claim. Where an application is filed for an independent millsite, a copy of the notice of the application and a copy of the plat must be posted on the site. A notice of intention to apply for patent must be posted on a millsite located in connection with a placer claim.

All applications for patent to millsites must be accompanied by statements of proof by two or more disinterested persons as to the nonmineral character of the land. The use or occupancy of the land for millsite purposes must be shown. In the case of an independent millsite, proof of the improvements and use of these must be shown.

SUPPORTING PAPERS FOR PATENT APPLICATION

The patent application (no particular form established) must be filed *in duplicate* in the proper BLM office after the notice of application has been posted on the claim and must be supported by:

1. Two copies of the field notes and two copies of the survey plat. If a mineral survey has been made, this plat also must be posted with the notice of application on the claim. One copy of the field notes and plat will be returned with, and be part of, the patent, if issued.

2. *Proof of posting on claim.* Statements of two credible witnesses, not claimants or their attorneys in fact, giving date and place of posting, with copy of notice attached to the statement.

3. *Evidence of title.* Each patent application must be supported by either a certificate of title or a certified abstract of title for each claim. Each certificate must be accompanied by single certified copies of the original and amended location notices of each claim.

The certificate of title or abstract must be current to a day reasonably near the date application is filed. It must be executed by a State-authorized abstractor or title company and in such form that may be satisfactory to the Director of the Bureau of Land Management.

The applicant, as soon as practicable, must file a supplemental certificate or abstract current to the date of filing of application.

The applicant, as evidence of his ownership of the claim, may furnish, in lieu of an abstract of title or certificate of title, a certified copy of the statute of limitations applicable to mining claims in the State. In addition, the applicant must furnish a statement, which includes the following facts:

a. Origin and maintenance of his title.

b. Area of the claim.

c. Amount and extent of mining improvements.

d. Whether his title has been disputed in court proceedings or otherwise. He must explain in detail any such disputes.

e. Other matters known to him which bear upon his right of possession.

This statement should be supported by statements of any other disinterested persons knowledgeable of the facts relative to the applicant's location, occupancy, possession, improvements, etc.

The applicant must also file a certificate, under seal of the court having jurisdiction, that no suit or action involving right of possession to the claim is pending. This certificate should also state that there has been no litigation in the court, affecting title to the claim, for the time fixed by the statute of limitations in the State other than that which has been decided in favor of the applicant for patent.

4. *Proof of citizenship.* Statements of citizenship may be signed either within or without the land district by:

a. A native-born citizen. He must state that fact giving the date and place of birth.

b. A person who has declared his intention to become a citizen, or has been naturalized. He must have a statement showing date, place, and the court before which he declared his intention or from which his naturalization papers issued, and the certificate number, if known.

c. An association that must furnish competent evidence, relative to a. and b. above, regarding each of its members.

d. A corporation that must furnish a certified copy of its charter or certificate of incorporation.

5. *Showing as to mineral deposit.* All applications must include sufficient details for the mineral specialist to determine whether a valuable mineral deposit has been found. A field examination is then conducted to confirm the facts contained in the applica-

tion. Therefore, each application should contain the following information:

a. Complete description of general geology.

b. Complete description of economic geology and mineralization.

c. Complete description of mineral deposit as to quantity and quality (ore reserves by grade).

d. Complete description of all discovery points.

e. Maps and results of drilling, sampling and analysis of samples (if other than routine methods of analysis).

f. Complete description of all workings, improvements, etc., on the claim.

g. Description of mining or extraction method.

h. Description of beneficiation or metallurgical or other processing of the raw material.

i. Description of transportation method from mine to mill or processing plant, and, if appropriate, to market.

j. Economic analysis, including actual or estimated mining, processing and other costs, value or price of product and estimated profitability, including estimated costs of reclamation as may be required under law or regulation.

k. In addition, application for widespread construction type or industrial minerals such as limestone, gypsum, bentonite, etc.—when locatable—must contain information to satisfy the marketability rule. This includes such data as:

(1). Why the deposit in question should be considered a locatable mineral.

(2). A complete description of the market for the mineral from the deposit, including market specifications, market demand and future trends, and market prices.

(3). An economic analysis showing the actual or estimated profitability of the sale of the mineral from the deposit into the market.

6. *Payment of filing fee.* $25 must accompany application.

7. *Publisher's agreement.* The BLM office will designate the newspaper in which notice of application will be published.

8. *Notice for publication.* The notice of application must be published at the expense of the applicant either in a weekly newspaper, nine consecutive insertions, or a daily, nine consecutive Wednesday insertions. Essential data is contained in Title 43, Code of Federal Regulations, Part 3862 4–2.

9. A copy of the notice of publication, identical to the published notice, and a copy of the plat must be posted at a conspicious place on the claim, or claims, for the full 60 days of publication.

10. A copy of notice of publication to be posted in the BLM State Office.

CONFIDENTIALITY: Trade secrets and commercial and financial information which are designated by the applicant and which are identified by BLM as privileged or confidential in accordance with the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), shall not be available for public inspection or made public or disclosed without the consent of the applicant.

FINAL PROCEEDINGS

The applicant must furnish the following prior to the issuance of Final Certificate of Mineral Entry:

1. *Proof of publication.* The sworn statement of the publisher that the notice was published for the statutory period, giving the first and last date of the publication.

2. *Statement of posting.* Statement showing that the mineral survey plat and notice of application for patent remained conspicuously posted upon the subject claim during the 60–day publication period. The dates of posting must be given.

3. *Statement of charges and fees paid by him.*

4. *Payment of purchase price.* The purchase price shall be as follows:

a. Lode claim and/or millsite in connection with lode claim: $5.00 for each acre and fractional part of an acre.

b. Placer claim and/or millsite in connection with placer claim: $2.50 for each acre and fractional part of an acre.

c. Millsite for quartz mill, where applicant does not own a lode claim: $5.00 for each acre and fractional part of an acre.

ADVERSE CLAIMS

Adverse claims must be filed within the 60–day period of publication by adverse claimant or attorney-in-fact (with proof of authority) in the proper BLM State Office. They must set forth the nature and extent of the conflict and the interest of the adverse claimant, with a certified copy of the adverse claim location certificate. Unless the claim is described by legal subdivisions, a plat showing the extent and boundaries of the adverse claim and the conflict should be filed.

Suit must be commenced in a court of competent jurisdiction to determine the right of possession within 30 days from the date of filing of the adverse claim, and it must be diligently prosecuted to final judgment.

Upon the filing of an adverse claim and commencement of suit, all proceedings in the BLM State Office will be suspended until the controversy is settled or the adverse claim waived.

A copy of the judgment roll certified by

the Clerk of the Court, or his certificate that suit has been dismissed or withdrawn, is required as proof of termination of suit.

BLM STATE OFFICE PROCEDURES

Although the routine in processing may vary from case to case, the following is a very general outline of steps taken in the BLM State Office, which are necessary and incident to processing a mineral patent application:

Upon receipt, a patent application will be scanned for sufficiency and conformity with statute and regulations. (If incomplete, the applicant will be advised and ordinarily allowed a reasonable time in which to correct the deficiency.)

The status of the land will be investigated by the BLM State Office. If all is in order, the record will be forwarded to the Office of the Solicitor for a title opinion. Unless full possessory title is vested in the patent applicant, further processing, in most instances, will be suspended until such time as the full title is demonstrated. A patent may not issue unless full possessory rights are vested in the applicant.

When the application, including proof of full possessory title, is complete and all else is regular, the BLM State Office will check the proposed publication for accuracy. It will furnish the applicant with the name of the newspaper in which the Notice of Application is to be published. The applicant will be required to furnish the agreement of the publisher to hold applicant alone responsible for the cost of the publication.

A copy of the Notice of Application will be posted in the BLM State Office for the full period of publication. A copy of the first publication must be furnished the BLM State Office where it will again be checked for accuracy. If correction is needed, the publisher will be so advised

and the notice must be published for the full period required as though the first publication had not been made. The publisher will bear any additional costs if the error is his. The Government will bear the additional cost if the error is the fault of the BLM State Office.

Upon receipt and approval of Proofs of Publication and Posting, the record will again be checked for completeness. All proper fees and costs must be paid by the applicant, and the publisher's statement that the publication is complete must be filed. The statement of the applicant showing that notice of the application was posted on the claim during the entire 60–day period must be furnished. Then, in the absence of any adverse claim, and the purchase price having been paid, Final Certificate of Mineral Entry is issued.

The issuance of final certificate does not mean that the patent proceedings are ended. Prior to the issuance of patent, validity of the mining claim must be verified. But no assessment work need be performed after the issuance of a final certificate.

The case record will be referred to a Government mineral examiner for verification that a valuable mineral deposit has been discovered, that the improvements necessary for patent have been made, and that other requirements of law have been met. Where the land covered by the patent application is within a national forest, the claim will be examined by a mineral examiner of the Forest Service. Elsewhere the claim will be examined by a Bureau of Land Management mineral examiner. These employees are either professional geologists, geological engineers, or mining engineers.

The Government mineral examiners will normally advise the mining claimant of the date set for an examination of a mining claim and invite him to accompany them in their examination. Where possible,

examinations will be rescheduled to accommodate the applicant. Discovery points must be available for inspection. Examiners are not expected to make a discovery for the mining claimant, renovate discovery points, or make examinations where workings are unsafe.

The Government mineral examiner is expected to be completely impartial. His examination will be objective and in accordance with accepted professional and industry practices. He is not authorized to offer his opinion at the time of examination and cannot discuss the merits of your claim.

If all is in order—a discovery demonstrated and other requirements met—the claim will be clearlisted to patent. However, if the "discovery" is not verified, the Government may initiate a "contest" proceeding against the claim.

A contest is an inquiry into the validity of a mining claim. The mining claimant is advised of the inquiry by the service of a "complaint." If he denies allegations of the complaint within the time provided, a hearing will be held in accordance with the Administrative Procedure Act. At this hearing he will be afforded opportunity to cross-examine the Government's witness and to offer evidence including expert testimony, to substantiate his assertion of the validity of the claim. The hearing is presided over by an Administrative Law Judge, who will render a decision only after full consideration of the law and all evidence submitted by the parties. Adverse decisions are subject to appeal procedures.

Ordinarily, a mining claim or millsite patent will convey the whole of the Government's title to the land covered by the claim. Such a conveyance in fee simple transfers the property to private ownership. The mining claimant may thereafter use the land as any other private property. The land is subject to taxes and local ordinances.

However, in certain instances the patent

will convey only a limited title or a title with certain restrictions. For example:

1. Mining claims subject to the Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521–531; P.L. 585) may be subject to a reservation of Leasing Act minerals to the United States.

2. Lands subject to Section 24 of the Federal Power Act or the Mining Claims Rights Restoration Act of August 11, 1955 (30 U.S.C. 621–625; P.L. 359), reserve all power rights to the Government.

3. Patents for mining claims located on Stockraising Homestead Lands will convey only the mineral estate, and in such case, the mining claimant may use the surface only insofar as is reasonably required for mining purposes.

4. Patents for mining claims in areas designated by special laws will be limited as provided by the respective statutes.

Although the Multiple Use Act of July 23, 1955 (30 U.S.C. 611 et seq.; P.L. 167), limits and restricts surface rights prior to patenting, the restrictions listed in Section 4 of that Act are not applicable after the issuance of patent.

For more detailed information, write the BLM State Office listed below that has jurisdiction over the area in which you are interested.

STATE OFFICES
U.S. Department of the Interior
Bureau of Land Management

Alaska
701 C Street
Box 13
Anchorage, AK 99513

Arizona
2400 Valley Bank Center
Phoenix, AZ 85073

California
Federal Building, Room E–2841
2800 Cottage Way
Sacramento, CA 95825

Colorado
Colorado State Bank Building
1600 Broadway
Denver, CO 80202

States East of the Mississippi River, Plus Iowa, Minnesota, Missouri, Arkansas and Louisiana
Eastern States Office
350 S. Pickett Street
Alexandria, VA 22304

Idaho
Federal Building, Room 398
550 West Fort Street
P.O. Box 042
Boise, ID 83724

Montana, North Dakota and South Dakota
222 N. 32nd Street
P.O. Box 30157
Billings, MT 59107

Nevada
Federal Building, Room 3008
300 Booth Street
Reno, NV 89509

New Mexico, Oklahoma and Texas
U.S. Post Office and Federal Building
P.O. Box 1449
Santa Fe, NM 87501

Oregon and Washington
729 N.E. Oregon Street
P.O. Box 2965
Portland, OR 97208

Utah
University Club Building
136 East South Temple
Salt Lake City, UT 84111

Wyoming, Kansas and Nebraska
2515 Warren Avenue
P.O. Box 1828
Cheyenne, WY 82001

REGIONAL OFFICES
U.S. Department of Agriculture
Forest Service

Northern Region
Federal Building
Missoula, MT 59807

Rocky Mountain Region
11177 West Eighth Avenue, Box 25127
Lakewood, CO 80225

Southwestern Region
Federal Building
517 Gold Avenue, S.W.
Albuquerque, NM 87102

Intermountain Region
Federal Building
324 25th Street
Ogden, UT 84401

Pacific Southwest Region
630 Sansome Street
San Francisco, CA 94111

Pacific Northwest Region
319 S.W. Pine Street
P.O. Box 3623
Portland, OR 97208

Southern Region
1720 Peachtree Road, N.W.
Atlanta, GA 30309

Eastern Region
633 West Wisconsin Avenue
Milwaukee, WI 53203

Alaska Region
Federal Office Building
P.O. Box 1628
Juneau, AK 99802

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IS # 4 (Revised January 1980)

U. S. Department of the Interior
Bureau of Land Management
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